THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

WPMS No. 729 of 2003 (M/S) decide on 18/9/2003

Raj Vardhan Khandoori Vs Addl. District Judge, and others

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-18.09.2003 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 729 of 2003 (MS)

Sri Raj Vardhan Khandoori s/o Sri Goverdhan Prasad
Khandoori r/o Badrinath Marg, Srinagar,
District Pauri Garhwal ……. Petitioner

Vesus

1. Addl. District Judge/Fast Track Court,
   Pauri Garhwal
2. Smt. Manorma Namboori w/o late Sri Mahesh
   Prasad Lamboori.
3. Sri Rajesh Namboori s/o Sri Mahesh Prasad Lamboori
4. Sri Kamlesh Namboori s/o Sri Mahesh Prasad Lamboori
5. Sri Umesh Namboori s/o Sri Mahesh Prasad Lamboori
6. Km. Rashmi Lamboori D/o Sri Mahesh Prasad Lamboori
7. Sri Harsh Vardhan Khandoori s/o Sri Goverdhan Prasad
   Khandoori, r/o Bardinath Marg, Srinagar Garhwal

……. Respondents

Sri V.K. Bisht, Advocate for the petitioner
Sri R. Dobhal, Advocate and Standing counsel for the respondents.

Hon'ble Rajesh Tandon J.

By the present writ petition, the petitioner has challenged the order dated 11.6.2003 passed by the respondent no.1 on the application for amendment in the written statement by which amendment has been allowed.

Brief facts giving rise to the present writ petition are that an application under section 21 (1)(a) of U.P. Act No.13 of 1972 was filed by the petitioner being owner of building bearing Municipal No. 186, situated in Khanduri Ka- Bagh, Pauri, District Pauri Garhwal. It was alleged that the petitioner and the respondent no.7 are the joint owners of the building but due to family partition between the co-

owners in the April 1997, the building came in the exclusive share of the petitioner. The Prescribed Authority vide order dated 26.2.2001 has allowed the application of the petitioner under section 21(1)(a) of the Act. The tenant respondents no.2 to 7 filed appeal under Sec. 22 of the Act, being Rent Appeal No. 1 of 2001. During the pendency of the appeal an application for amendment was moved by the respondent tenants to add 8 paragraphs in their written statement. The petitioner has objected the said amendment but the same was allowed vide order-dated 8.7.2003. Against the said order the present writ petition has been preferred by the landlord.

Heard the learned counsel for the parties. Both the parties have agreed that the writ petition may be disposed of at the admission stage.

By way of proposed amendment the tenants have challenged the family partition as well as given details of the property available with the landlord. Suffice is to say that both the parties have to lead evidence to prove their respective claims.

A perusal of the record shows that the Prescribed Authority has allowed the release application under section 21(1)(a) of Act No. XIII of 1972 after recording the findings regarding bona fide need of the landlord. The petitioner has established his bona fide need on the ground that he has retired and as such he requires premises for his own use and occupation.

By the proposed amendment in the written statement it appears that the tenants have disputed the family partition of the petitioner. The question in the present case requires for the tenant to dispute the partition amongst the family of the landlord and

Secondly the scope and nature of the amendment and further as to whether it affects the rights of the parties.

Coming to the first point it is established fact that the tenant cannot be allowed to disown the title of the landlord in as much as family partition of the co-landlords cannot be disputed by the tenant in view of the observation of the Apex Court in the case of *M/s Taraknath & another vs. Sushil Chandra Dey by Lrs. And others JT 1996 (5) S.C. 272 which reads as under:*

The property admittedly belongs to father Syed Md. Mahibullah who died in 1954. Thereby all the brothers and sisters become owners to the extent of their shares they had succeeded to the property. Thus all of them are co-owners. It would be open to the sisters to relinquish their rights by way of gift, even oral, which is valid in personal law. Since the tenant has been in occupation, it would be constructive delivery of the possession. Delivery of the physical possession to the brother in the circumstances, is not warranted as regards the family settlement of the brothers it would be open to the brothers to resolve the prospective dispute by way of family settlement. The brothers having agreed for the settlement though they have been impleaded as party-respondents to the suit, they have not challenged the family settlement nor have they contested the validity thereof."

In the case B.N.Tewari vs. Iind Addl. District Judge, Nainital & others, 1982 ARC 526, it has been held as under:

"It is a well settled cardinal rule that no tenant can be allowed to question the title of a landlord. If after the alleged partition, a tenant has attorned to a particular erst while co-owner as his sole landlord, I apprehend that it will not be open to such a tenant to question the title of such a landlord on the ground that the transaction

whereby his landlord became the sole owner of the property was a malafide one and not genuine one."

The observations of the Apex Court made in the case of Mohammed Chaudhari vs. Gundappa Amabadas Bukate AIR 1997 S.C. 998: has been relied in the case of Surendra Kumar vs. ADJ Nainital 2000 (2) ARC 155 as under:

"In Sk. Sattar Sk. Mohammed Choudhari vs. Gundappa Amabadas Bukate AIR 1997 SC 998: 1997 SCFBRC 53, where a suit was filed for eviction by a co-lesser to whom property was given on partition, it was held that the tenant cannot object to such partition but he show that the partition was not bona fide and was a sham transaction to over come the rigorous of rent control laws which protected eviction of tenants except on specific grounds set out in the relevant statute."

It has further been held in the case of Sharvan Kumar mittal vs. XVIIIth A.D.J. Meerut and others, 2001 (1) ARC 456 as under:

"The mere fact that a family settlement had taken place will not raise a presumption of its being collusive. Parties are free to settle their affairs of mutual agreement through family settlement. If such a settlement is a device to frustrate mala fide the defence of the tenant then certainly the tenant should have lead evidence on the point and passed the plea and got it adjudicated in appeal. It will be open to the tenant to raise the objection regarding family settlement being collusive; while the appeal itself is being adjudicated. The court below in appeal allowed amendment application. The main appeal is still pending. I find no manifest error apparent on the face of the record in view of the decision of the Supreme Court reported in AIR 1969 SC 1267."

Coming to the second point it may be pointed out that it will be open for the parties to lead evidence with regard to the amendment sought by the respondents. It is well established in the case Mahesh Narain Shuka vs. Ram Kishore 1979 (U.P.) R.C.C. 213 that by allowing the amendment no right can be accrued and truthfulness or falsity of the claim is still open to the parties. The observations are quoted below:

"It is also settled that while deciding an application for amendment a court is not entitled to consider the truth of falsity of a statement through the amendment. If an amendment is false, the plaintiff will fail in the suit. As such the court below was wrong in examining the merits of the amendment and rejecting the same on that ground."

Similar view has been taken in the case Deepak Katyal vs District Judge, Allahabad and others, ARC 1999 (2) 509. The observations are as under:

"The question at present is not to consider the merit of the case. The Judge Small Causes court had only allowed the amendment application. The Revisional Authority had made it clear that the merit of the controversy is not to be examined at this stage."

The counsel for the petitioner has referred the decision in 2001 (1) ARC 372 with regard to the fact that written statement filed jointly cannot be amended by a single tenant. This decision is not applicable to the facts of the present case as in that case earlier at the behest of one of the defendant written statement was amended and thereafter High Court has held that now the amendment cannot be incorporated unless all the defendants have not joined it.

The aforesaid argument is not acceptable from another point of view as well i.e. in view of the analogy of order 41 Rule 4 C.P.C. one

of the plaintiff or defendant is not debarred form filing the appeal where there are more plaintiffs or defendants are there in a suit. The Apex Court while interpreting Order 41 Rule 4 of the Code of Civil Procedure in *C.R. Patil vs. Bapu Koyappa Patil 2003 (9) All India Cases 377, has held as under:*

"Order 41 Rule 4 of the Code enables reversal of the decree by the court in appeal at the instance of one or some of the plaintiffs appealing and it can do so in favour of even non-appearing plaintiffs. As a necessary consequence such reversal of the decree can be against the interest of the defendant vis-avis non-appealing plaintiffs .Order 41 Rule 4, has to be read with order 41 Rule 33. Order 41 Rule 33 empowers the appellate Court to do complete justice between the parties by passing such order or decree which ought to have been passed or made although not all the parties affected by the decree had appealed."

Coming to the merits of the order allowing the amendment, it has been held in the case Ragu Thilak D. Johan vs. S. Rayppan and others, 2001 (1) ARC 393 as under:

"After referring to the judgments in Charan Dass vs. Amir Khan, AIR 1921 PC 50; L.J. Leach and Co. Ltd. and antoher vs. Jardine Skinner and Company, 1957 SCR 438; Smt. Ganga Bai vs. Vijay Kumar and others, 1974 (2) SCC 393; M/S Ganesh Trading Co. vs. Moji Ram, 1978 (2) SCC 91 and various other authorities, this court in B.K.N. Pillai v. P. lillai and another, JT 1999 (10) SC 61: 2000 SCFBRC 32 held:

"The purpose and object of Order VI Rule 17 Civil Procedure Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the

proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

In my view, therefore, no interference can be made under Article 226 or 227 of the Constitution of India against allowing of the amendment.

In view of the aforesaid the writ petition is dismissed.

(Rajesh Tandon, J.)

18.09.2003
Dhyani